

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2286 & 2287/Mds/2015

निर्धारण वर्ष / Assessment Years : 2009-10 & 2011-12

M/s Standard Fireworks (P) Ltd.,  
C/o Shri S. Sridhar, Advocate,  
New No.14, Old No.82, Flat No.5,  
1<sup>st</sup> Avenue, Indira Nagar,  
Adyar, Chennai - 600 020.

v. The Additional Commissioner of  
Income Tax,  
Virudhunagar Range,  
Virudhunagar.

PAN : AACCS 1480 M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 02.11.2016

घोषणा की तारीख/Date of Pronouncement : 27.12.2016

### **आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-1, Madurai, dated 13.10.2015 and pertain to assessment years 2009-

10 and 2011-12. Since common issue arises for consideration in both the appeals, we heard these appeals together and disposing of the same by this common order.

2. The only issue arises for consideration is disallowance of charity / mahamai collected by the assessee.

3. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee collected 1.5% of the sale value after discount towards charity / mahamai. The charity / mahamai collected by the assessee to the extent of ₹94,04,737/- was not taken as sales turnover and it was also not offered for taxation. According to the Ld. counsel, the charity / mahamai collected by the assessee from the customers on the sales are paid to the charitable trust and the same was applied for charitable purpose. The Ld.counsel clarified that the directors of the assessee-company promoted trust and established educational institution. The amount collected by the assessee-company towards charity / mahamai was paid to the charitable institution for the purpose of running the educational institution. The Ld.counsel further submitted that the amount was collected towards charity / mahamai, therefore, the amount collected by the assessee was diverted by overriding title.

According to the Ld. counsel, mahamai / charity collected by the assessee is not part of sale price; it is a payment made by the respective customers for a specific charitable purpose. The Ld.counsel placed his reliance on the judgment of Supreme Court in CIT v. Bijli Cotton Mills (P.) Ltd. (1979) 116 ITR 60 and also the judgment of Madras High Court in CIT v. Coimbatore Cotton Mills Ltd. (1983) 140 ITR 562. The Ld.counsel has also placed reliance on the judgment of Supreme Court in Siddheshwar Sahakari Sakhar Karkhana Ltd. v. CIT (2004) 270 ITR 1.

4. On the contrary, Shri B. Sahadevan, the Ld. Departmental Representative, submitted that the assessee collected charity / mahamai from the customers who purchased the goods from the assessee. The Ld. D.R. further clarified that no charity / mahamai was collected from the persons who has no business dealing with the assessee. Admittedly, charity / mahamai was collected from the customers who purchased goods from the assessee, therefore, according to the Ld. D.R., what was collected by the assessee is nothing but purchase price, hence, it cannot be taken as voluntary charity paid by the customers.

5. The Ld. Departmental Representative further submitted that the trust M/s Standard Fireworks Charities was promoted by the directors of the assessee-company and the directors of the assessee-company have full control over the charitable institution. Therefore, the CIT(Appeals) found that the judgment of Apex Court in Bijli Cotton Mills (P.) Ltd. (supra) may not be applicable to the facts of the case. The assessee itself claimed before the CIT(Appeals) alternative claim of deduction under Section 80G of the Income-tax Act, 1961 (in short 'the Act'). The CIT(Appeals), in fact, accepted the alternative claim of the assessee and found that the assessee is eligible for deduction under Section 80G of the Act with respect to 50% of the charity collected during the year under consideration, which was paid to the trust. Therefore, according to the Ld. D.R., no interference is called for.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee is engaged in the business of manufacturing and sale of fireworks. In the course of business activity, the assessee has collected 1.5% of sale value towards charity. From the material available on record, it appears without payment of so-called mahamai / charity, the

customers were not able to purchase fireworks from the assessee-company. The question arises for consideration is whether the charity / mahamai collected by the assessee forms part of total turnover of the assessee? When the payment was made to the charitable institution, whether it is an application of income or the income diverted by overriding title also needs to be considered?

7. We have carefully gone through the judgment of Apex Court in Bijli Cotton Mills (P.) Ltd. (supra). In the case before the Apex Court, "Dharmada" was collected on sale of yarn and cotton, at the rate of 1 anna per bundle of 10 lbs. of yarn and 2 annas per bale of cotton. In the bills issued to the customers, these amounts were shown in a separate column headed "Dharmada". The amount so collected was not in the trading account but a separate books of account was maintained known as 'Dharmada account' in which the amount collected was credited and payments made to charity were debited. The High Court found that the amount collected by the assessee towards "Dharmada" is not an income of the assessee, therefore, not liable to tax. On further appeal before the Apex Court, it was found that when the customers paid amounts to assessee's earmarking them for "Dharmada", those payments were

validly earmarked for charity and the assessee holds the amount under an obligation to spend the same for charitable purpose, it cannot be considered to be a trading receipt. In the case before us, it is not clear from the orders of both the authorities below whether the charity / mahamai collected by the assessee is credited in the trading account or the assessee is maintaining separate books of account. If the assessee was maintaining separate books and credited the amounts collected towards charity / mahamai and debited the amounts paid to charitable purpose, then this Tribunal is of the considered opinion that in view of the judgment of Apex Court in *Bijli Cotton Mills (P.) Ltd. (supra)*, it cannot be considered to be income of the assessee, therefore, there is no liability to pay the tax.

8. This judgment of Apex Court was distinguished by the CIT(Appeals) on the ground that the directors of the assessee-company were controlling the trust. This Tribunal is of the considered opinion that merely because the directors of the assessee-company were controlling the trust, when the amounts were specifically collected towards charity and the assessee was maintaining separate books of account with regard to collection of charity and the payments made to trust, it cannot be said that the

judgment of Apex Court is not applicable to the facts of the case. This Tribunal is of the considered opinion that when the assessee is maintaining books of account in respect of the amounts collected towards mahamai / charity and credited the amounts collected towards charity and debited the amounts paid to the trust in the separate books of account, the assessee is not liable for taxation. Since these aspects were not examined by the Assessing Officer as well as the CIT(Appeals), this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly, the orders of the lower authorities are set aside and the claim of the assessee is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and bring on record whether the bills issued by the assessee disclose the mahamai / charity in a separate column and also find out whether the assessee is maintaining separate books of account in respect of charity / mahamai collected and payments made to the trust and, thereafter decide the issue afresh in the light of the judgment of Apex Court in Bijli Cotton Mills (P.) Ltd. (supra), after giving a reasonable opportunity to the assessee.

9. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on 27<sup>th</sup> December, 2016 at Chennai.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. Sunder Singh)

लेखा सदस्य/Accountant Member  
Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> December, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Madurai
4. Principal CIT, Madurai-1, Madurai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.